strued strictly against the insurer. The Court of Appeals, conceding this rule of construction to be true, held that it had no application to this case, for the reason that if the words of the condition were given their common ordinary meaning they could not be construed otherwise than as defining the nature of the force and violence that must accompany the burglary to bring the loss within the policy. Granted that the precise result was not contemplated by the contracting parties, still the policy was clear and unambiguous, and the court could not rightfully by interpretation relieve one of the parties from disadvantageous terms which he had actually and fairly made. In this view of the case it is in accord with *Maryland Casualty Co.* v. *Ballard Co. Bank,* 134 Ky. 354, 120 S. W. 301, where a policy which exempted the insurer from liability unless the safe was entered by the use of "tools or explosives directly thereupon" was held not to cover a loss where a bank official was compelled at the point of the pistol to open the safe by working the combination. See also *First National Bank* v. *Maryland Casualty Co.,* 162 Cal. 61, 121 Pac. 321.

MASTER AND SERVANT—INJURIES TO SERVANT CAUSED BY DEFECT IN SIMPLE TOOLS.—The plaintiff was employed by the defendant company as a helper for a blacksmith. One of the tools used by the plaintiff in his employment was a set-hammer, which had become battered by use and was repaired in the defendant's shops. While using the hammer after it was repaired, the plaintiff was injured by a piece of the hammer flying off and striking him in the eye. *Held,* that where the tool is manufactured by the employer, the employer is liable for injuries caused by defects even though the tool is a simple one. *Herricks* v. *Chicago & E. I. R. Co.* (Ill. 1913), 100 N. E. 897.

The rule which fixes liability upon the master for injuries resulting from defects rests upon the assumption that the employer has a better and more comprehensive knowledge than the employee. As a general rule, in cases where the instrument or tool the defect in which is the cause of the injury, is of so simple a character that a person accustomed to its use can not fail to appreciate the risk, the master is not liable. In the following cases a hammer has been held to be a simple tool of this character: *Golden* v. *Ellis,* 104 Me. 177, 71 Atl. 649; *Rahm* v. *Chicago, R. I. & P. R. R. Co.,* 129 Mo. App. 679, 108 S. W. 570; *O'Hara* v. *Brown Hoisting Machine Co.,* 171 Fed. 394; *Mercer* v. *Atlantic Coast Line R. R. Co.,* 154 N. C. 399, 70 S. E. 742; *Lehman* v. *Chicago, St. Paul M. & O. Ry. Co.,* 140 Wis. 497, 122 N. W. 1059. This rule is applicable where the tools are obtained from third parties because in such cases the employer and the employee have equal means of knowing the conditions. The decision in the principal case is based upon the ground that in cases where the employer manufactures the tool, the employee does not have an equal chance of knowing the defects. This distinction has been made in cases of simple tools in *Morris* v. *Eastern Ry. Co.,* 88 Minn. 112, 92 N. W. 535; *Vant Hul* v. *Great Northern Ry. Co.,* 90 Minn. 329, 96 N. W. 789; *Johnson* v. *Mo. Pacific Ry. Co.,* 96 Mo. 340, 9 S. W. 790; *Baltimore & O. S. W. Ry. Co.* v. *Amos,* 20 Ind. App. 378; *Standard Oil Co.* v. *Bowker,* 141 Ind., 12, 40 N. W. 128. The employer manufacturing the tool has a

better opportunity than the employee to know the conditions of that tool, and the rule in the principal case is just in all cases of latent defects, where the employee's lack of knowledge is not due to negligence.

NEGLIGENCE—RULE OF RES IPSA LOQUITUR.—Defendant company's street car collided with a train at a crossing. Plaintiff, a passenger on the street car, charged negligence generally. *Held,* that the doctrine of ***res ipsa loquitur*** applied, and the burden was on the defendant to show there was no negligence . *Nagel* v. *United Rys. Co. of St. Louis* (Mo. 1913), 152 S. W. 621.

It is the general rule, in cases of collisions of cars, where negligence is charged generally, that the doctrine of *res ipsa loquitur* applies. *Elgin A. & S. Trac. Co.* v. *Wilson,* 217 Ill. 47, 4 St. Ry. Rep. 193, 75 N. E. 436; *North Baltimore Pass. R. Co.* v. *Kaskell,* 78 Md. 517, 28 Atl. 510; *Magrane* v. *St. L. & S. Ry. Co.,* 183 Mo. 119, 3 St. Ry. Rep. 563, 81 S. W. 1158; *Kay* v. *Metrop. St. R. Co.,* 163 N. Y. 447, 29 App. Div. (N. Y.) 466, 51 N. Y. Supp. 724; *Abel* v. *Northampton T. Co.,* 212 Pa. St. 329, 4 St. Ry. Rep. 960, 61 Atl. 915. Where the collision is between cars belonging to and under the control of different companies, the doctrine applies to the company on whose car the plaintiff was a passenger, but not to the other company. *Loudoun* v. *Eighth Av. R. Co.,* 162 N. Y. 380, 56 N. E. 988.

SALES—INCIDENCE OF RISK AS BEARING ON PASSAGE OF TITLE.—Plaintiff agreed to put up 10,000 lbs. of yolks of eggs, place the same in cold storage as prepared, and ship f. o. b. to defendant as needed. Plaintiff was to pay storage and insurance till January 1. By the preceding October the entire amount had been prepared and stored with the designated cold storage company, but spoiled before January 1. In an action for the price, the defendant buyer claimed that since the risk of loss of the goods was on the seller till January, title remained in the seller also, with the accompanying risk of the eggs' spoiling. *Held,* that title passed to the buyer in October when the entire amount of yolks had been placed in storage, and that the stipulation throwing the risk on the seller after that time was an indication that title then passed. *Stewart* v. *Henningsen Produce Co.* (Kans. 1913), 129 Pac. 181.

Ordinarily the rule is that, *"Res perit domino,"* the title and risk going together. BENJAMIN, SALES, 5th Ed., 402; WILLISTON, SALES, § 301; SALES ACT, § 22. But the risk may be separated from the title by agreement. WILLISTON, SALES, § 302; *Illinois Glass Co.* v. *U. S. Horse Radish Co.,* 166 Mich. 520. When the passing of title to goods is in dispute, a stipulation in the contract concerned that the risk is on the one party or the other raises two conflicting inferences, sometimes in the same court. See the opinions of BLACKBURN and COCKBURN in *Martineau* v. *Kitching,* L. R. 7 Q. B. 436. According to the *Elgee Cotton Cases, 22* Wall. 180, the fact that the risk is expressly assumed by the one party indicates that the title is in the other. "The stipulation that the cotton should be at the risk of the buyer, instead of showing an intention of the parties that the right of property should pass to him seems rather to indicate a purpose that the ownership should remain unchanged. Else why introduce a provision wholly unnecessary?" In other